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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)

Amendment of Part 90 of the)

Commission's Rules to)

Facilitate Future Development)

in the 800 MHz Frequency Band)

PR Docket No. 93-144

RM-8117, RM-8030

RM-8029

COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits these comments in response to the Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceeding.² As discussed below, CTIA endorses the Commission's authority to reallocate spectrum (and to relocate or "retune" licensees) when necessary to

¹ CTIA is a trade association whose members provide Commercial Mobile Radio Services, including over 95 percent of the licensees providing cellular service to the United States, Canada, and Mexico, and the nation's largest providers ESMR service. CTIA's membership also includes wireless equipment manufacturers, support service providers, and others with an interest in the wireless industry.

² Further Notice of Proposed Rulemaking, PR Docket No. 93-144, released November 4, 1994.

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create regulatory symmetry and advance the more efficient use of the spectrum and the furtherance of a competitive CMRS marketplace, and CTIA supports the Commission's efforts to achieve regulatory parity for all functionally equivalent commercial mobile radio services.

The Commission Has Authority to Reallocate Spectrum

CTIA recognizes the Commission's authority to reallocate spectrum. Section 303(c) of the Communications Act grants the FCC the general authority to "[a]ssign bands of frequencies to the various classes of stations, and assign frequencies for each individual station..." as the public convenience, interest, or necessity requires.³ Indeed, cellular and SMR service is provided today on spectrum originally allocated to UHF television channels 70-83.⁴

As the Commission recently observed, "because virtually all of the usable spectrum already is allocated to specific

³ In 1983, Congress directed the Commission to make it "the policy of the United States to encourage the provision of new technologies and services to the public" by adding Section 7 to the Act. See 47 U.S.C. 157(a).

⁴ See *Notice of Inquiry and Notice of Proposed Rulemaking*, Docket No. 18262, 14 FCC 2d 311 (1968); *First Report and Order*, Docket No. 18262, 19 RR 2d 1663 (1970).

services, ... to provide for new services, the Commission must identify spectrum that can be shared ... or that can be reallocated to a new service and the incumbent licensees relocated."⁵ Thus, with respect to PCS, the FCC determined that relocating incumbent microwave users from the 2 GHz spectrum band was in the public interest because that spectrum was needed for the provision of emerging technologies.⁶ The Commission also has proposed to reallocate spectrum in its "Spectrum Refarming" proceeding by requiring incumbent licensees to reduce their occupied bandwidth to make room for new licensees.⁷ To establish comparable service, the unfettered ability to obtain contiguous spectrum should be promoted as was done for PCS. The creation of contiguous spectrum would encourage the utilization of more spectrum-efficient technologies.

⁵ *Notice of Proposed Rule Making*, Gen Docket No., 90-314, 7 FCC Rcd 5676 (1992), at ¶ 31.

⁶ *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992), at ¶14.

⁷ *Notice of Proposed Rule Making*, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

**The Commission Should Eliminate All Regulatory
Impediments that Prevent Full CMRS Providers from
Competing**

CTIA believes that the Commission's rules should permit all full CMRS providers to compete in a regulatory environment that is free of barriers that restrict competition. Accordingly, the Commission's rules should treat all CMRS licensees fairly by eliminating unwarranted regulatory impediments that impede a carrier's ability to contest the markets of its competitors.

This FNPRM is part of a series of rule making proceedings necessitated by the 1993 Budget Act's amendments to Section 332 of the Communications Act.⁸ The Budget Act amendments, which were signed into law on August 10, 1993, reflect the clear Congressional intent to create regulatory symmetry among similar mobile services.⁹

Section 6002(d)(3) of the Budget Act requires the Commission to amend its rules for reclassified former private carriers "as may be necessary and practical to

⁸ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103- 66, 107 Stat. 312 (1993).

⁹ See *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, at ¶ 2.

assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services." Accordingly, on August 9, 1994, the Commission adopted its *Third Report and Order* in this docket which established the technical, licensing, and operational rules needed to create "regulatory symmetry and a competitive [CMRS] marketplace."¹⁰

The Budget Act also contains a three year transition period during which time existing SMR and other former private radio services will continue to be regulated as private carriers. The FNPRM will require new rules to be adopted, auctions to be conducted, and retuning to occur, a time-consuming process. CTIA believes that after August 10, 1996, when wide-area SMRs will begin to function as full CMRS providers, there should be full regulatory parity between these SMR services and all other CMRS services, including cellular and PCS. In other words, at the time SMR operators comply with the CMRS rules, then all CMRS

¹⁰ *Third Report and Order*, GN Docket No. 93-252, released September 23, 1994, at ¶ 4.

providers should compete in an environment where the Commission's rules "maximize competition among CMRS providers and eliminate regulatory distortions in the mobile services marketplace."¹¹ The adoption of geographic areas, broadband licenses, with contiguous spectrum will contribute to forming this environment sometime after August 10, 1996.

Conclusion

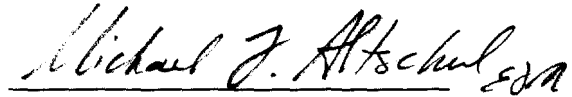
The Commission's authority to reallocate spectrum must be subject to the public convenience, interest, and necessity. This requires the Commission to assure that all costs associated with the relocation (or "retuning") of SMR licensees are paid for by the new entrant; that incumbent licensees are afforded an appropriate period of time to relocate/retune their service; and that the incumbents' service is not diminished or harmed.

In addition, CTIA believes that the Commission's rules should treat all CMRS licensees fairly by eliminating unwarranted regulatory impediments that impede any carrier's ability to contest the markets of its competitors. In the context of this proceeding, the Commission should implement a broad approach to regulatory parity which will become

¹¹ *Id.*, at ¶ 94.

effective after August 10, 1996, when wide-area SMR
providers begin to operate as full CMRS providers.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael F. Altschul", followed by a stylized flourish or set of initials.

Michael F. Altschul
Vice President, General Counsel

Cellular Telecommunications
Industry Association
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

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